

The Department is authorized to utilize its best judgment and information to correct Use Tax returns. See 35 ILCS 105/3-10. (This is a GIL).

January 2, 2002

Dear Xxxxx:

This letter is in response to your letter dated September 26, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We represent a client (hereinafter 'Company A') who is contemplating a corporate restructuring which will involve a transfer of corporate aircraft from an existing corporate entity to a newly created entity. This letter is to determine the Department of Revenues' position on the Illinois Use tax implications of the following:

'Company A' is a multi-state corporation with business locations in various states. As part of its business activities it currently leases a corporate aircraft from a related entity. Company A uses the aircraft to transport its corporate executives, and the executives of affiliated companies, on business travel throughout the United States. The aircraft is registered and hangered outside Illinois.

As part of a corporate restructure ownership of the aircraft will be moved to a new entity hereafter called AAA. The transfer of both possession and ownership of the aircraft will occur outside Illinois. It is intended that the transfer of the aircraft to AAA will qualify as a tax-free capital contribution under the Internal Revenue Code. AAA will receive no consideration for the contribution and will not assume any debt or other obligations of its parent transferor. After completion of this restructuring AAA intends to import the aircraft into Illinois and will hanger the aircraft at an Illinois airport. AAA will bail the aircraft to Company A for use by Company A in the transportation of its corporate executives.

Based on our review of Illinois law it appears that the use of the aircraft should be exempt from use tax since the transaction under which AAA will acquire the aircraft should not be considered a retail sale in that the transferor will receive no consideration.

We are seeking your opinion as to whether the use of the aircraft in Illinois after the completion of the corporate restructure, and the import of the aircraft into Illinois will be subject to Illinois Use Tax. In addition, if the corporate restructure involved a transfer

from the leasing entity to another entity prior to the transfer to AAA and that transfer of ownership and possession occurred outside Illinois would the tax consequences change.

It would be greatly appreciated if your response could be expedited. Thank you in advance for your assistance. If you have any questions or if you require any additional information please contact the undersigned.

We cannot issue a binding determination in the context of a General Information Letter. Because of the nature of your question, you and your client may wish to consider obtaining a binding Private Letter Ruling from our office. See the last sentence of this response that cites the regulation that sets out the requirements for obtaining a Private Letter Ruling.

The proposed transaction in your letter is very fact intensive. We believe that a Department tax auditor would be the appropriate person to review all relevant information and documents in order to consider your allegations of fact. This will occur if one attempts to register and title the airplane in Illinois without paying tax.

Your letter sets out a scenario wherein Company A leases an airplane from a related entity (RE) for transport of its executives on business travel. A then will have RE transfer possession and ownership of the aircraft to a new entity, AAA. AAA will then import the aircraft into Illinois and A will lease the plane from AAA as it currently does from RE. You assert the transfer from RE to AAA will occur without consideration. Although your letter states that AAA would receive no consideration, you stated in our recent telephone conversation that AAA would tender no consideration.

You contend there would be no retail sale because of the lack of consideration. Based upon that, you request our concurrence that the subsequent use of the plane in Illinois by AAA would not be subject to Use Tax. We respectfully decline to issue such a ruling for this or the other proposed transaction involving a transfer from RE to another entity prior to transfer to AAA.

We find it unusual that such a transfer would occur without consideration, considering that the asset involved has considerable value and that both RE and AAA are owned and controlled by A. In a retail sale the Retailers Occupation/Use Tax is measured by sellers' gross receipts from such sales. See 86 Ill. Adm. Code 130.101. "Gross receipts" from sales of tangible personal property at retail is defined as the total selling price or the amount of such sales. "Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. See 35 ILCS 105/2 and 120/1. Because the concept of consideration is broader than cash, it could include services or other property received for a capital contribution.

The Department is authorized to use its best information and judgment to correct a Use Tax return, 35 ILCS 105/12 and 120/4. As noted above, if your client were to attempt to title the airplane in Illinois without paying tax, a Department tax auditor would review all relevant information and documents in order to consider your allegations of fact.

To the extent you can demonstrate that when RE transferred the plane to AAA that such transfer actually was made without the conveyance of consideration, we would consider the transfer to not have been a retail sale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

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